

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
V.	§	CASE NO. 4:09-cr-00307
EHAB ASHOOR	§	

DEFENDANT'S OPPOSED MOTION FOR CONTINUANCE OF TRIAL DATE

TO THE HONORABLE JUDGE DAVID HITTNER, UNITED STATES DISTRICT COURT
JUDGE, FOR THE SOUTHERN DISTRICT OF TEXAS:

COMES NOW, EHAB ASHOOR, defendant in the above and entitled cause, by and through his Attorneys, Douglas C. McNabb and Erich C. Ferrari, and moves this Honorable Court to continue the above captioned matter and reset the trial date.

I.

This case was declared a complex case pursuant to 18 United States Code, Section 3161(h)(7)(B)(ii).

II.

At 4:40 pm on the evening of Friday, December 18, 2009, Assistant United States Attorney ("AUSA") Jason Varnado sent defense counsel an email stating that there were emails from a GoDaddy.com account under the Defendant's name which the government had garnered by search warrant that had not been provided to the defense. AUSA Varnado stated in this email that the documents were on CDs and were available for pick up at the U.S. Attorney's Office Reception Area. The U.S. Attorney's Office closed on Friday 20 minutes after the email was sent.

AUSA Varnado sent another email to defense counsel at 12:22 pm on Wednesday, December 23, 2009 asking if defense counsel had arranged for pick up of the Godaddy.com emails and also informing defense counsel that he would have his exhibits ready for pick up by the close of business that day. A staff member of McNabb Associates, P.C. picked up all of the CDs and exhibits on that day.

Upon inspection of the documentation received, Mr. Ferrari discerned that the CDs containing the GoDaddy.com emails consisted of over 5,562 emails. In an effort to not delay the trial any further, Mr. Ferrari worked diligently through the New Year holiday and weekend. As of Sunday, January 3, 2010, he was only able to review approximately 20% of the email collection.

On Saturday, January 2, 2010, Mr. Ferrari sent an email to AUSA Varnado explaining the situation and that it would not be possible for all of the emails to be reviewed prior to the pre-trial conference and commencement of trial. Mr. Ferrari believing that all emails needed to be reviewed in order to provide the defendant with effective assistance of counsel requested that the government join the defense in a continuance of the trial date. In the email, Mr. Ferrari stated that the defense needed thirty (30) additional days.

On Sunday, January 3, 2010, AUSA Varnado left a voicemail message for Mr. Ferrari stating that he would not be inclined to agree to the filing of such motion. Mr. Ferrari spoke with AUSA Varnado on Monday morning, January 4, 2010, and the government stated that they would oppose any motion to continue the trial date.

The defendant submits that additional time is required to review these documents and that anything short of a full review of the document collection would prevent Mr. Ashoor from receiving the effective assistance of counsel. Furthermore, this motion is not made for the purpose of delay, and that the ends of justice will be served by the granting of such continuance, and that the continuance outweighs the best interests of the public and the defendant's right to a speedy trial pursuant to 18 U.S.C. § 3161(h)(8).

PRAYER

WHEREFORE, PREMISES CONSIDERED, the defendant, Ehab Ashoor, prays this Honorable Court will find that in the interest of justice, due process and fundamental fairness, a continuance of the trial setting is warranted.

Respectfully submitted,
McNabb Associates, P.C.

/s/ Douglas C. McNabb

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Attorney For Defendant,
Ehab Ashoor

CERTIFICATE OF SERVICE

I, Douglas C. McNabb, do hereby certify that on this the 4th day of January 2010 filed this Opposed Motion for Continuance of Trial Date electronically.

/s/ Douglas C. McNabb
Douglas C. McNabb

Attorney For Defendant,
Ehab Ashoor